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Supreme Court, U.S.
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No. 96-1324

In The

Supreme Court of the United States

October Term, 1996

MARINA ZARNES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER

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PRELIMINARY STATEMENT

Petitioner has requested that this Honorable Court review three areas of her case. The issues submitted are as follows:

A. **The United States Court of Appeals for the Seventh Circuit has rendered a decision that is in conflict with the decisions of the United States Supreme Court, thereby calling for the exercise of the Supreme Court's supervisory power.**

B. **The exercise of the Supreme Court's supervisory power is requested to determine whether the provisions of the AEDPA, relating to §2255 Petitions, are violative of the United States Constitution.**

C. **The exercise of the Supreme Court's supervisory power is requested to determine if the provisions of the AEDPA, relating to §2255 Petitions, are subject to retroactive application.**

Petitioner respectfully submits that this Supplemental Brief provides further case law, from various Circuits, dealing with the positions previously submitted in the third issue listed above.

Furthermore, as this Court has already granted the Petition of Certiorari in the case of ***Lindh v. Murphy***, 96 F.3d 856 (7th Cir.1996)(en banc), ***cert. granted***, 117 S.Ct. 726, 136 L.Ed.2d 643 (1997), which deals significantly on the issues raised by Petitioner, it is respectfully requested that the present petition be granted and reviewed along with the above-referenced case.

ARGUMENT

As set out in the original Petition, the Seventh Circuit, decided that the certificate of appealability requirements of the AEDPA were applicable to Petitioner, even though her original petition was filed prior to the enactment of the AEDPA. Given the differing interpretations from other Circuits, Petitioner seeks a decision which determines whether the provisions of the AEDPA are to be applied retroactively.

Along with the cases already submitted, Petitioner respectfully submits the following cases in support of the differing interpretations of the retroactive application of the provisions in the AEDPA.

Williams v. Calderon, 83 F.3d 281 (9th Cir.1996), where the Ninth Circuit assumed, without deciding, that § 2253(c)(2) of the Act does not apply

retroactively. This position was based on an interpretation that the restrictions only apply to capital cases. ***Williams***, 83 F.3d at 286, n.2.

Also, compare ***Lyons v. Ohio Adult Parole Authority, et al.***, 105 F.3d 1063 (6th Cir.1997) with ***Martin v. United States***, 96 F.3d 853 (7th Cir.1996). In both cases, the petitioners sought habeas relief and had submitted notices of appeal, through the prisons, to the court prior to the enactment of the AEDPA. In both cases, the district court had not issued a certificate of probable cause. In ***Martin***, the Seventh did not apply the new restrictions retroactively. However, the Sixth Circuit, in ***Lyons***, found that the new restrictions were retroactive, and should have been applied.

Also, as previously submitted, it is requested that this Honorable Court examine the issue of retroactivity as it pertains to the AEDPA as a whole. Specifically, how is the AEDPA to impact those inmates who were imprisoned prior to the enactment date and never filed any Habeas petitions and/or Motions pursuant to 28 U.S.C. § 2255.

There appear to be three possible alternative applications, to wit: (i) as the AEDPA places new restrictions on the filing of post-conviction motions, the "new" restrictions should not be imposed upon the above-described individuals at all; (ii) allow those inmates who's case were finalized before the enactment of the AEDPA to file motions within a reasonable time

period from the date of enactment. This would require a ruling which sets out, specifically, the time frame applicable to said persons; and (iii) give the AEDPA total retroactive impact, thereby denying such individuals any hope of any post-conviction relief based solely on a failure to bring forth their respective issues within the one-year limitations set out in the AEDPA.

As to the first-listed alternative, Petitioner respectfully submits the following case:

Reyes v. Keane, 90 F.3d 676 (2d Cir.1996) (AEDPA's one-year statute of limitations not applied to §2254 petitions where one-year period expired before effective date of Act).

As to the second alternative mentioned above, Petitioner respectfully submits the following cases for examination:

Peterson v. Demskie, __F.3d__, 1997 U.S. App. LEXIS 2297 (2d Cir. February 5, 1997);

Lindh v. Murphy, 96 F.3d 856 (7th Cir.1996)(en banc), ***cert. granted***, 117 S.Ct. 726, 136 L.Ed.2d 643 (1997).

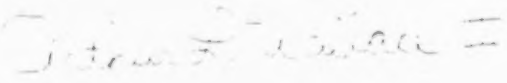
Again, as the retroactive issue, as a whole, is of great concern to both those incarcerated and those representing them, it respectfully submitted that this

issue be addressed along with the issues directly relating to Petitioner's case.

CONCLUSION

Petitioner hereby respectfully re-submits the request that this Honorable Court to approve this application for certiorari.

Respectfully submitted,



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